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13 **UNITED STATES DISTRICT COURT**

14 **SOUTHERN DISTRICT OF CALIFORNIA**

15 UNITED STATES OF AMERICA,

Case No. 14CR0388-MMA

16 Plaintiff,

**RESPONSE IN OPPOSITION TO
MOTION TO RECONSIDER ORDER
DENYING DISCOVERY REGARDING
THE RECUSAL OF THE UNITED
STATES ATTORNEY**

17 v.

18 JOSE SUSUMO AZANO MATSURA
19 (1),

Date: November 3, 2014

Time: 2:00 p.m.

20 Defendant.

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22 Defendant Jose Susumo Azano Matsura moves the Court to reconsider its order
23 denying Azano's motion for discovery concerning the United States Attorney's recusal.
24 For several reasons, the Court should deny the motion.
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1 First, Azano raises nothing new. He does not present any new facts, and he does
2 not cite any intervening case law. While courts have inherent authority to reconsider
3 rulings in criminal cases, the party moving for reconsideration should typically: (1)
4 present newly discovered evidence; (2) demonstrate that the initial decision was clearly
5 erroneous or manifestly unjust; (3) cite an intervening change in controlling law; or (4)
6 present some other, highly unusual circumstances warranting reconsideration. United
7 States v. Rosas, 2011 U.S. Dist. Lexis 74815, at *1 (S.D. Cal. July 11, 2011)(citing
8 School Dist. N. 1J Multnomah Cty. v. ACandS, Inc., 5 F.3d 1255, 1263 (9th Cir. 1993)).
9
10 Azano does the opposite: he cites virtually all the same cases and makes the same
11 arguments. He identify no error or injustice, let alone clear error or manifest injustice.
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13 There is no reason for the Court to reconsider its order. See Millennium Labs., Inc. v.
14 Allied World Assurance Co., 2014 U.S. Dist. LEXIS 145934, at *2 (S.D. Cal. Oct. 10,
15 2014)(motion for reconsideration “does not give parties ‘a second bite at the
16 apple’”)(citation omitted).
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19 Second, while Azano again stresses the importance of a “disinterested prosecutor,”
20 he presents no facts suggesting that the prosecutors handling this case are anything other
21 than disinterested. Beyond making the general observation that United States Attorney
22 Duffy is the “boss” of the office, Azano does not allege – much less present any facts
23 suggesting – that United States Attorney Duffy is handling this case, influencing this
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1 case, giving direction on this case, or even receiving briefings on this case. In fact, she is
2 not.

3 Third, effectively conceding that Rule 16 does not support his motion, Azano again
4 seeks to pound a square peg into the round hole of Brady v. Maryland, 373 U.S. 83
5 (1963). But Brady applies to evidence “material to either guilt or to punishment.” Brady,
6 373 U.S. at 87. The reasons for United States Attorney Duffy’s *non-involvement* in this
7 case are, of course, not material to Azano’s guilt or punishment. Indeed, Azano cites no
8 case holding that Brady compels discovery of the reasons for a prosecutor’s recusal from
9 a case.
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12 But even assuming for argument’s sake that Brady applies to whether the
13 prosecutor is “disinterested,” its only feasible application would be to the attorneys who
14 are, in fact, prosecuting the case. As noted, however, Azano proffers no facts suggesting
15 that the assigned prosecutors are anything other than disinterested. Thus, even assuming
16 that Brady could theoretically apply, Azano fails to meet his initial burden of producing
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1 some evidence to support an inference that the government possesses undisclosed
2 material favorable to the defense.

3 Dated: October 27, 2014

Respectfully submitted,

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5 */s/William P. Cole*

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8 By 28 U.S.C. § 515

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